

## **The Honorable J. Kelley Arnold**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

JASON C. DODGE )  
Plaintiff, ) Case No. 08-5542 JKA  
vs. )  
BNSF RAILWAY COMPANY, a Delaware ) STIPULATION AND ORDER TO  
Corporation, ) ADJUST DEADLINES  
Defendant. )  
 ) NOTE ON MOTION CALENDAR:  
 ) September 18, 2009  
 )

Plaintiff Jason Dodge and defendant BNSF Railway Company respectfully stipulate and request this Court enter an Order adjusting the deadlines for expert disclosures, discovery cutoff, and deadline to file dispositive motions as specified below.

## BACKGROUND

The Court has ordered completion of discovery in this case by February 14, 2010. See Dkt. 22 (*Scheduling Order*, dated December 17, 2008) (“Scheduling Order”). That February 14<sup>th</sup> discovery deadline falls approximately one month before the parties’ expert disclosures are due (March 16, 2010) and two months before the parties’ expert rebuttal disclosures are due (April

1 15, 2010). Similarly, the deadline to file dispositive motions falls on the same date primary  
2 expert reports are due (March 16, 2010), and approximately 30 days *before* rebuttal expert  
3 disclosures are due. To “secure the just, speedy, and inexpensive determination” of this case as  
4 required by Fed. R. Civ. Pro. 1, Dodge and BNSF stipulate and respectfully request that the  
5 deadlines for disclosure of expert and rebuttal witnesses, discovery cutoff, and filing dispositive  
6 motions be adjusted as follows:  
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<b>Event</b>	<b>Current schedule</b>	<b>Proposed schedule</b>
Disclosure of Expert Witnesses	<b>March 16, 2010</b> (per CR 26(a)(2)) (90 days before trial)	<b>February 16, 2010</b> (118 days before trial)
Disclosure of Rebuttal Witnesses	<b>April 15, 2010</b> (per CR 26(a)(2)) (60 days before trial)	<b>March 10, 2010</b> (96 days before trial)
Discovery Cut-off	<b>February 14, 2009</b> (120 days before trial)	<b>April 2, 2010</b> (73 days before trial)
Last Date to File Dispositive Motions	<b>March 16, 2010</b> (90 days before trial)	<b>April 8, 2010</b> (66 days before trial)
Trial	<b>June 14, 2010</b>	<b>June 14, 2010</b>

## ARGUMENT

17 The Federal Rules of Civil Procedure require a party to make its expert disclosure(s) “at  
18 the times and in the sequence that the court orders.” Fed.R.Civ.Pro. 26(a)(2)(C). The Western  
19 District’s Local Civil Rules provide that although 120 days before trial is the typical baseline for  
20 discovery cutoff, the court may adjust that date. *See* CR 16(f). Similarly, 90 days before trial is  
21 the standard deadline to file dispositive motions “unless otherwise ordered by the court.” CR  
22 16(g). A party may request that the court adjust scheduling deadlines pursuant to Fed.R.Civ.Pro.  
23 6(b), which states that “the court may, for good cause, extend the time” if “a request is made,  
24 before the original time . . . expires. . . .”  
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1 Both parties believe good cause exists to schedule the expert disclosures prior to the  
2 discovery cutoff and last date to file dispositive motions. First, it would be unfairly prejudicial to  
3 force either party to depose the other party's expert(s) before the deponent produces his or her  
4 expert report. For all intents and purposes, the deponent could simply refuse to analyze the  
5 information or render an opinion until after the discovery deadline passes. As a result, the parties  
6 will not have an opportunity to meaningfully depose their respective experts prior to trial.  
7 Second, the parties will not be able to file dispositive motions based on those expert disclosures.  
8 Finally, the parties would be potentially required to offer premature or incomplete opinions or  
9 responses during the course of regularly-conducted discovery.

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11 For those reasons, BNSF and Nelson respectfully request the court adjust the Scheduling  
12 Order: Disclosure of Expert Witnesses on February 16, 2010; Disclosure of Rebuttal Witnesses  
13 on March 10, 2010; Date for Completion of Discovery on April 2, 2010; and Last Date to File  
14 Dispositive Motions on April 8, 2010.

15  
16 DATED this 18<sup>th</sup> day of September, 2009.  
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<p>18 <u>s/William Jungbauer</u> 19 William G. Jungbauer 20 Don C. Aldrich 21 Attorneys for Plaintiff 22 Yaeger, Jungbauer &amp; Barczak, PLC 23 745 Kasota Avenue Minneapolis, MN 55414 (612) 333-6371 Fax: (612) 333-3619</p>	<p>24 25 26 27 28 <u>s/Tom Montgomery</u> Tom Montgomery Tobias Kammer Attorneys for Defendant, BNSF Railway Montgomery Scarp MacDougall, PLLC 1218 3rd Ave, Ste 2700 Seattle, WA 98101-3237 (206) 625-1801 Fax: (206) 625-1807</p>
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2                   **ORDER**  
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6     IT IS SO ORDERED.  
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10   DATED this 21<sup>st</sup> of September, 2009.  
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J. Kelley Arnold  
United States Magistrate Judge